

## § 26.81

licensee or other entity shall take immediate action to prevent the individual from performing the duties that require him or her to be subject to this subpart.

(1) If an observed behavior or physical condition creates a reasonable suspicion of possible substance abuse, the licensee or other entity shall perform drug and alcohol testing. The results must be negative before the individual returns to performing the duties that require the individual to be subject to this subpart. However, if the physical condition is the smell of alcohol with no other behavioral or physical indications of impairment, then only an alcohol test is required and the results must be negative before the individual returns to performing his or her duties.

(2) If a licensee or C/V who is subject to subpart I of this part is certain that the observed behavior or physical condition is the result solely of fatigue, the licensee or C/V shall ensure that a fatigue assessment is conducted under § 26.211. If the results of the fatigue assessment confirm that the observed behavior or physical condition is the result solely of fatigue, the licensee or C/V need not perform drug and alcohol tests or implement the determination of fitness process otherwise required by § 26.189.

(3) For other indications of possible impairment that do not create a reasonable suspicion of substance abuse (or fatigue, in the case of licensees and C/Vs who are subject to subpart I of this part), the licensee or other entity may permit the individual to return to performing his or her duties only after the impairing or questionable conditions are resolved and a determination of fitness indicates that the individual is fit to safely and competently perform his or her duties.

(c) If a licensee or other entity has a reasonable belief that an NRC employee or NRC contractor may be under the influence of any substance, or is otherwise unfit for duty, the licensee or other entity may not deny access but shall escort the individual. In any such instance, the licensee or other entity shall immediately notify the appropriate Regional Administrator by telephone, followed by written notification (e.g., e-mail or fax) to

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document the oral notification. If the Regional Administrator cannot be reached, the licensee or other entity shall notify the NRC Operations Center.

### Subpart E—Collecting Specimens for Testing

#### § 26.81 Purpose and applicability.

This subpart contains requirements for collecting specimens for drug testing and conducting alcohol tests by or on behalf of the licensees and other entities in § 26.3(a) through (d) for the categories of individuals specified in § 26.4(a) through (d) and (g). At the discretion of a licensee or other entity in § 26.3(c), specimen collections and alcohol tests must be conducted either under this subpart for the individuals specified in § 26.4(e) and (f) or the licensee or other entity may rely on specimen collections and alcohol tests conducted under the requirements of 49 CFR Part 40 for the individuals specified in § 26.4(e) and (f). The requirements of this subpart do not apply to specimen collections and alcohol tests that are conducted under the requirements of 49 CFR Part 40, as permitted in this paragraph and under §§ 26.4(j) and 26.31(b)(2) and Subpart K.

#### § 26.83 Specimens to be collected.

Except as permitted under § 26.31(d)(5), licensees and other entities who are subject to this subpart shall—

(a) Collect either breath or oral fluids for initial tests for alcohol. Breath must be collected for confirmatory tests for alcohol; and

(b) Collect only urine specimens for both initial and confirmatory tests for drugs.

#### § 26.85 Collector qualifications and responsibilities.

(a) *Urine collector qualifications.* Urine collectors shall be knowledgeable of the requirements of this part and the FFD policy and procedures of the licensee or other entity for whom collections are performed, and shall keep current on any changes to urine collection procedures. Collectors shall receive qualification training that meets the requirements of this paragraph and demonstrate proficiency in applying

the requirements of this paragraph before serving as a collector. At a minimum, qualification training must provide instruction on the following subjects:

(1) All steps necessary to complete a collection correctly and the proper completion and transmission of the custody-and-control form;

(2) Methods to address “problem” collections, including, but not limited to, collections involving “shy bladder” and attempts to tamper with a specimen;

(3) How to correct problems in collections; and

(4) The collector’s responsibility for maintaining the integrity of the specimen collection and transfer process, carefully ensuring the modesty and privacy of the donor, and avoiding any conduct or remarks that might be construed as accusatorial or otherwise offensive or inappropriate.

(b) *Alcohol collector qualifications.* Alcohol collectors shall be knowledgeable of the requirements of this part and the FFD policy and procedures of the licensee or other entity for whom collections are performed, and shall keep current on any changes to alcohol collection procedures. Collectors shall receive qualification training meeting the requirements of this paragraph and demonstrate proficiency in applying the requirements of this paragraph before serving as a collector. At a minimum, qualification training must provide instruction on the following subjects:

(1) The alcohol testing requirements of this part;

(2) Operation of the particular alcohol testing device(s) [i.e., the alcohol screening devices (ASDs) or EBTs] to be used, consistent with the most recent version of the manufacturers’ instructions;

(3) Methods to address “problem” collections, including, but not limited to, collections involving “shy lung” and attempts to tamper with a specimen;

(4) How to correct problems in collections; and

(5) The collector’s responsibility for maintaining the integrity of the specimen collection process, carefully ensuring the privacy of the donor, and

avoiding any conduct or remarks that might be construed as accusatorial or otherwise offensive or inappropriate.

(c) *Alternative collectors.* A medical professional, technologist, or technician may serve as a collector without meeting the collector qualification requirements in paragraphs (a) or (b) of this section, as applicable, only if all of the following conditions are met:

(1) A collector who meets the requirements of paragraphs (a) or (b) of this section cannot reasonably be made available at the time the collection must occur;

(2) The individual is not employed by the licensee’s or other entity’s FFD program and his or her normal workplace is not at the licensee’s or other entity’s facility;

(3) The individual does not routinely provide FFD program services to the licensee or other entity;

(4) The individual is licensed or otherwise approved to practice in the jurisdiction in which the collection occurs; and

(5) The individual is provided with detailed, clearly-illustrated, written instructions for collecting specimens under this subpart and follows those instructions.

(d) *Personnel available to testify at proceedings.* The licensee or other entity shall ensure that qualified collection site personnel, when required, are available to testify in an administrative or disciplinary proceeding against an individual when that proceeding is based on positive drug or alcohol test results or adulterated or substituted test results from specimens collected by or under contract to the licensee or other entity.

(e) *Files.* Collection site personnel files must include each individual’s resume of training and experience; certification or license, if any; references; job descriptions; records of performance evaluations and advancement; incident reports, if any; results of tests to establish employee competency for the position he or she holds, including, but not limited to, certification that collectors are proficient in administering alcohol tests consistent with

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the most recent manufacturer's instructions for the instruments and devices used; and appropriate data to support determinations of honesty and integrity conducted under § 26.31(b).

### § 26.87 Collection sites.

(a) Each FFD program must have one or more designated collection sites that have all necessary personnel, materials, equipment, facilities, and supervision to collect specimens for drug testing and to perform alcohol testing. Each collection site must provide for the collection, security, temporary storage, and shipping or transportation of urine specimens to a drug testing laboratory; the collection of oral fluids or breath specimens; and the security of alcohol testing devices and test results. A properly equipped mobile facility that meets the requirements of this section is an acceptable collection site.

(b) The collection site must provide for the donor's visual privacy while the donor and collector are viewing the results of an alcohol test, and for individual privacy while the donor is submitting a urine specimen, except if a directly observed urine specimen collection is required. Unauthorized personnel may not be present for the specimen collection.

(c) Contracts for collection site services must permit representatives of the NRC, licensee, or other entity to conduct unannounced inspections and audits and to obtain all information and documentation that is reasonably relevant to the inspections and audits.

(d) Licensees and other entities shall take the following measures to prevent unauthorized access to the collection site that could compromise the integrity of the collection process or the specimens.

(1) Unauthorized personnel may not be permitted in any part of the designated collection site where specimens are collected or stored;

(2) A designated collection site must be secure. If a collection site is dedicated solely to specimen collection, it must be secure at all times. Methods of assuring security may include, but are not limited to, physical measures to control access, such as locked doors, alarms, or visual monitoring of the col-

lection site when it is not occupied; and

(3) If a collection site cannot be dedicated solely to collecting specimens, the portion of the facility that is used for specimen collection must be secured and, during the time period during which a specimen is being collected, a sign must be posted to indicate that access is permitted only for authorized personnel.

(e) The following steps must be taken to deter the dilution and adulteration of urine specimens at the collection site:

(1) Agents that color any source of standing water in the stall or room in which the donor will provide a specimen, including, but not limited to, the toilet bowl or tank, must be placed in the source of standing water, so that the reservoirs of water are neither yellow nor colorless;

(2) There must be no other source of water (e.g., no shower or sink) in the enclosure where urination occurs, or the source of water must be rendered unusable; and

(3) Chemicals or products that could be used to contaminate or otherwise alter the specimen must be removed from the collection site or secured. The collector shall inspect the enclosure in which urination will occur before each collection to ensure that no materials are available that could be used to subvert the testing process.

(f) In the exceptional event that a designated collection site is inaccessible and there is an immediate requirement to collect a urine specimen, including, but not limited to, an event investigation, then the licensee or other entity may use a public rest room, onsite rest room, or hospital examining room according to the following procedures:

(1) The facility must be secured by visual inspection to ensure that no unauthorized persons are present, and that undetected access (e.g., through a rear door not in the view of the collector) is impossible. Security during the collection may be maintained by restricting access to collection materials and specimens. In the case of a public rest room, a sign must be posted or an individual assigned to ensure that no unauthorized personnel are